

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:

MOHAMMAD A. FAROOQUI,

Complainant,

and

CHICAGO TRANSIT AUTHORITY,

Respondent.

Charge No. 2003CA3473

EEOC No. 21BA3280

ALS No. 07-231

Judge Reva S. Bauch,
Presiding

RECOMMENDED ORDER AND DECISION

This matter is brought pursuant to Respondent's Motion to Dismiss ("Motion"). The Motion states that Respondent has complied with the terms of a Settlement Agreement and Release ("Settlement Agreement") entered into by the parties on November 19, 2009. In addition, Respondent argues that Complainant and his executor have failed to comply with Commission Orders and prosecute this matter. Complainant had until July 28, 2010 to respond to this Motion. No response was filed. Accordingly, this matter is now ready for disposition.

The Illinois Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

FINDINGS OF FACT

The following facts were derived from the record file in this matter.

1. On November 19, 2009, the parties executed a Settlement Agreement. The Settlement Agreement provided that Complainant, no later than the date of full execution of the Settlement Agreement, would file a motion to voluntarily dismiss the Complaint with the Commission.

2. On December 16, 2009, Respondent tendered Complainant a check in accordance with its understanding of the settlement terms.

3. On December 17, 2009, Complainant's attorney wrote Respondent's attorney questioning the amount of the check as it related to withholding for Federal taxes.

4. On December 23, 2009, Respondent's attorney responded to Complainant's attorney's December 17, 2009 letter.

5. Complainant endorsed and deposited the check in December 2009.

6. Respondent paid the check in December 2009.

7. On January 7, 2010, this matter was scheduled for a status on settlement. Both parties appeared through their respective attorneys.

8. At the January 7, 2010 status hearing, a new status hearing was set for February 4, 2010.

9. On February 4, 2010, neither party appeared for the status hearing. By Order dated February 10, 2010, a new status hearing was scheduled for March 4, 2010.

10. The Commission served a copy of my February 10, 2010 Order on both parties' attorneys.

11. On March 4, 2010, attorneys for both parties appeared before me. Complainant's attorney reported that Complainant had passed away.

12. My March 4, 2010 Order required Complainant's attorney to inform the executor of Complainant's estate of this pending proceeding and request that the executor file a substitution for the Complainant. The matter was set for another status hearing on June 3, 2010.

13. To date, Complainant's executor has not filed a substitution of parties as ordered in my March 4, 2010 Order.

14. On June 3, 2010, neither party appeared. A new status hearing was scheduled for June 16, 2010. The June 3, 2010 Order also stated that failure of a party to appear for a

scheduled hearing or comply with a Commission order may be grounds for dismissal, or other sanctions as justice requires.

15. The Commission served my June 3, 2010 Order on both parties' attorneys.

16. On June 16, 2010, Respondent appeared through its attorney. Neither Complainant's attorney, nor the executor of Complainant's estate, appeared.

17. My June 16, 2010 Order set a briefing schedule for Respondent's Motion to Dismiss.

18. On July 14, 2010, Respondent filed its Motion to Dismiss.

19. Respondent's attorney filed a Certificate of Service with the Commission on July 14, 2010 certifying that its Motion to Dismiss and the Commission's June 16, 2010 Order had been served on Complainant's attorney of record.

20. To date, Complainant has failed to file a response to the Motion as ordered by my June 16, 2010 Order.

CONCLUSIONS OF LAW

1. A complaint may be dismissed when a party fails to appear at a scheduled hearing without requesting a continuance reasonably in advance or unreasonably refuses to comply with a Commission Order or otherwise engages in conduct which unreasonably delays or protracts proceedings.

2. No one on Complainant behalf has appeared at scheduled status hearings. There has been a failure to comply with several Commission Orders. The appropriate sanction is dismissal of the Complaint, and the underlying charge, with prejudice.

3. Complainant's acceptance and cashing of Respondent's settlement check constitutes an accord and satisfaction.

DISCUSSION

Under Commission Procedural Rules, an Administrative Law Judge may recommend to the Commission that a complaint be dismissed where a party fails to appear at a scheduled status hearing, unreasonably refuses to comply with a Commission Order or otherwise engages in conduct which unreasonably delays or protracts proceedings. See **56 Ill. Admin. Code §5300.750(e)**.

A fundamental principle governing practice before the Commission is that complainants must diligently pursue their cases once they are docketed with the Commission. Complainant, his executor and his attorney have failed to appear for scheduled status hearings. Complainant and his executor have also failed to comply with several Commission Orders. It appears that Complainant and his executor have simply abandoned this case. As such, it is appropriate to dismiss his Complaint, with prejudice. **Aceves and Everlast Concrete, Inc. and Artech Concrete, Inc., IHRC, ALS No. 12187, May 18, 2005.**

In addition, Respondent tendered a settlement check to Complainant with the belief that the check was payment in full. If Complainant believed the check amount was incorrect, he could have returned the check to Respondent or not deposited it. Notwithstanding the fact that Complainant's attorney wrote Respondent's attorney and expressed concerns with the amount of the check that had been tendered, Complainant deposited it. I find that Complainant's acceptance and negotiation of the check constituted an accord and satisfaction. **Koules v. Euro-American Arbitrage, Inc., 293 Ill. App.3d 823, 689 N.E.2d 411 (2nd Dist. 1998); Quaintance Associates Inc., 95 Ill. App.3d 818, 420 N.E.2d 567 (1st Dist. 1981).** Accordingly, the settlement has been completed as contemplated and this matter should be dismissed.

Furthermore, Complainant has not filed any response to the Motion to Dismiss. The Commission has held that a dispositive motion should be granted where it appears on its face to be valid and the Complainant has failed to file a response. **Jones and Burlington Northern Railroad, IHRC, ALS No. 1704, June 23, 1986.**

RECOMMENDATION

I recommend the Commission dismiss the Complaint, and the underlying charge, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: September 1st, 2010